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Filing date: **05/12/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173189
Party	Plaintiff MONSTERCOMMERCE, LLC
Correspondence Address	Brian J. Winterfeldt Ballard Spahr Andrews & Ingersoll, LLP 601 13th Street, N.W. Washington, DC 20005-3807 UNITED STATES
Submission	Reply in Support of Motion
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, larsont@ballardspahr.com
Signature	/Hara K. Jacobs/
Date	05/12/2008
Attachments	Reply.PDF (15 pages)(263581 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

MONSTERCOMMERCE, LLC,
Opposer,
v.
IGOR LOGNIKOV,
Applicant.

Opposition No. 91173189

**REPLY BRIEF IN SUPPORT OF OPPOSER’S MOTION
TO STRIKE APPLICANT’S AFFIRMATIVE DEFENSES**

Opposer, MonsterCommerce, LLC (“MonsterCommerce” or “Opposer”) submits the following reply brief in support of its Motion to Strike the Affirmative Defenses of Applicant, Igor Lognikov (“Lognikov” or “Applicant”).

Opposer moved to strike Applicant's affirmative defenses because they are meritless defenses that have already been rejected by the Board and serve no purpose other than to delay these proceedings and harass Opposer. Applicant's response to Opposer's motion, which principally relies on an irrelevant decision from 1927, underscores why Applicant's affirmative defenses should be stricken -- there is no basis to assert them in this proceeding.

A. Applicant's Affirmative Defenses Are Not Supported by the Federal Products Decision From 1927

Applicant contends that its affirmative defenses rest on the legal precedent of unclean hands and cites an inapposite case from 1927 to support its erroneous proposition. (Applicant's br. at 2.) In Federal Products, 23 F.2d 759 (C.A.D.C. 1927), the Examiner of

Interferences and Commissioner of Patents sustained an opposition against the applicant. On appeal, the applicant argued that the decision to sustain the opposition should be reversed because opposer came to court with unclean hands. The factual basis for applicant's argument was that opposer made false and misleading claims to the public in its advertisements for the trademark on which it relied to sustain the opposition. Specifically, opposer falsely claimed that its VELVA mark for cologne was "Venetian" when the product was actually made in New York. The court reversed the Commissioner's decision finding that "inasmuch as opposer relied upon her trade-mark registration, the sole use of which... is in connection with a label which contains the misstatement as to the origins of the goods on which the mark is used, opposer is not in a position to invoke the benefit of the Trade-Mark Act to protect her business..." Id. at 761.

The Federal Products decision and the underlying legal issue, unclean hands, are irrelevant to this proceeding because they concern false representations in the use of a relied upon mark. Applicant has not alleged that MonsterCommerce has made false representations with respect to its use of the relied upon MONSTERCOMMERCE mark or its use of the relied upon MONSTER Family of Marks. Applicant's meritless allegation involves MonsterCommerce's allegations in its second amended notice of opposition, which do not form the basis for a properly pleaded unclean hands defense under Federal Products.

In any event, MonsterCommerce has not made misrepresentations in its second amended notice of opposition by stating that it is the owner of the MONSTER Family of Marks. As this Board has already twice found, MonsterCommerce is a wholly-owned subsidiary of Network Solutions, and Network Solutions controls MonsterCommerce's assets. Accordingly, MonsterCommerce's allegation in its second amended notice of opposition that it is the owner of

the Monster Family of Marks was not misleading or a misrepresentation, and cannot support a defense of unclean hands. Accordingly, Applicant's affirmative defenses should be stricken.

B. MonsterCommerce's Assignment of its Registration to its Parent Company Network Solutions Renders the Issue Moot

Opposer has an additional ground to strike Applicant's affirmative defenses based on MonsterCommerce's claim of ownership of the MONSTER Family of Marks -- MonsterCommerce's assignment of the MONSTERCOMMERCE mark and registration (Registration No. 2,947,268) to its parent company Network Solutions, LLC renders Applicant's defenses moot.

In late 2007, MonsterCommerce assigned U.S. Registration No. 2,947,268 to its parent company Network Solutions, LLC, consistent with corporate practices. Following the Board's Order lifting the suspension of this matter, Opposer recorded the assignment with the United States Patent and Trademark Office's Assignment Division on April 28, 2008. On May 9, 2008, MonsterCommerce filed its recorded assignment with the Board and requested that the assignee, Network Solutions, LLC, be joined as an opposer pursuant to TBMP § 512.01. A copy of MonsterCommerce's filing with the Board is attached hereto as Exhibit A.

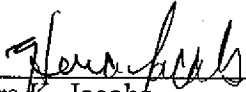
Subject to the Board's approval, Applicant's argument that MonsterCommerce is not the owner of the MONSTER Family of Marks because its parent company Network Solutions, LLC owns the MONSTERLOCAL and MONSTERMARKETPLACE applications is moot. MonsterCommerce assigned the MONSTERCOMMERCE mark and registration to Network Solutions consistent with corporate practices and Network Solutions is now an opposer with MonsterCommerce in this proceeding.

Opposer respectfully submits that Applicant's Affirmative Defenses 1-5 should be stricken and Applicant should be prohibited from rearguing any of these issues during the

remainder of the proceeding. Opposer further submits that the proceeding should be suspended pending the disposition of Opposer's motion so that further resources are not wasted on discovery directed to Applicant's legally insufficient affirmative defenses.

Respectfully submitted,

Date: May 12, 2008

By: 
Hara K. Jacobs
Brian J. Winterfeldt
Troy E. Larson
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
601 13th Street, NW, Suite 1000 South
Washington, D.C. 20005
(202) 661-2200

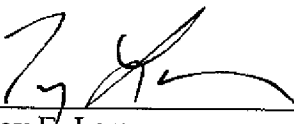
ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I, Troy E. Larson, hereby certify that on today's date, I caused a copy of the foregoing Reply to Applicant's Opposition to MonsterCommerce's Motion to Strike Applicant's Affirmative Defenses in its Answer to the Second Amended Notice of Opposition to be served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

Dated: May 12, 2008



Troy E. Larson

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Opposition No. 91173189

**OPPOSER MONSTERCOMMERCE'S MOTION TO
JOIN NETWORK SOLUTIONS, LLC AS A PARTY OPPOSER**

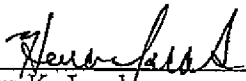
Opposer, MonsterCommerce, LLC ("MonsterCommerce") by its counsel, hereby moves to join its parent company, Network Solutions, LLC ("Network Solutions"), as a party opposer in this Proceeding.

On February 20, 2007, in its Second Amended Notice of Opposition, MonsterCommerce alleged that it is the owner of the MONSTERCOMMERCE mark, the subject of U.S. Registration No. 2,947,268. In November 2007, MonsterCommerce assigned U.S. Registration No. 2,947,268 to its parent company Network Solutions consistent with corporate practices. Following the Board's Order lifting the suspension of this matter, Opposer recorded the assignment of Registration No. 2,947,268 with the United States Patent and Trademark Office's Assignment Division on April 28, 2008. A copy of the assignment and Notice of Recordation are attached hereto as Exhibit A.

As Network Solutions is the owner by assignment of pleaded Registration No. 2,947,268 for the mark MONSTERCOMMERCE, Network Solutions should be joined as a party to this proceeding. Accordingly, and pursuant to TBMP § 512.01, MonsterCommerce respectfully requests that Network Solutions be joined as a party opposer in this proceeding.

Respectfully submitted,

Date: May 9, 2008

By: 
Hara K. Jacobs
Brian J. Winterfeldt
Troy E. Larson
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
601 13th Street, NW, Suite 1000 South
Washington, D.C. 20005
(202) 661-2200

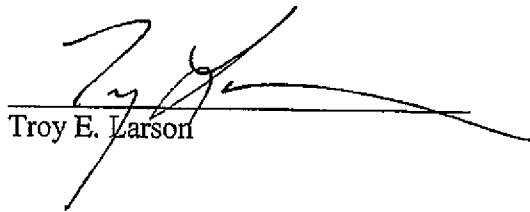
ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I, Troy E. Larson, hereby certify that on today's date, I caused a copy of the foregoing MonsterCommerce's Motion to Join Network Solutions, LLC as a Party Opposer to be served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

Dated: May 9, 2008



Troy E. Larson

EXHIBIT A

TRADEMARK ASSIGNMENT

WHEREAS, MonsterCommerce, LLC, a California limited liability company, located at 1 Bronze Pointe, Suite 1C, Belleville, Illinois 62226 ("MonsterCommerce"), owns all right, title, and interest in and to the mark MONSTERCOMMERCE (United States Reg. No. 2,947,268), registered on May 10, 2005 (hereinafter "the Mark");

WHEREAS, Network Solutions, LLC, a Delaware limited liability company located at 13861 Sunrise Valley Drive, Suite 300, Herndon, Virginia 20171 ("Network Solutions"), is desirous of acquiring all right, title and interest in and to the Mark and in and to the associated registration.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MonsterCommerce does hereby grant, assign and set over to Network Solutions, its successors, assigns and legal representatives, the entire right, title and interest in and to the Mark throughout the world, together with the goodwill of the business symbolized by such Mark.

MonsterCommerce also assigns unto Network Solutions all claims for relief by reason of any past, present and future infringements of such Mark, with the right to sue for and collect damages for its own use and benefit, and for the use and benefit of its successors, assigns and other legal representatives. MonsterCommerce will, upon request, execute additional documents and generally do all other lawful acts reasonable and necessary to give effect to and record this Assignment.

IN WITNESS WHEREOF, MonsterCommerce has caused this Trademark Assignment to be signed by its duly authorized representative on the 30th day of November, 2007.

MonsterCommerce, LLC

By: 

Name: Bobby N. Turnage, Jr.

Title: Secretary 

O:HARA K. JACOBS COMPANY:BALLARD SPAHR ANDREWS & INGERSOLL, LLP

**UNITED STATES PATENT AND TRADEMARK OFFICE**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

APRIL 29, 2008

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PTAS

HARA K. JACOBS
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 MARKET STREET, 51ST FLOOR
PHILADELPHIA, PA 19103-7599UNITED STATES PATENT AND TRADEMARK OFFICE
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RECORDATION DATE: 04/28/2008

REEL/FRAME: 003767/0954

NUMBER OF PAGES: 3

BRIEF: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
DOCKET NUMBER: 077683

ASSIGNOR:

MONSTERCOMMERCE, LLC

DOC DATE: 11/30/2007

CITIZENSHIP: CALIFORNIA

ENTITY: LIMITED LIABILITY
COMPANY

ASSIGNEE:

NETWORK SOLUTIONS, LLC
13861 SUNRISE VALLEY DRIVE, SUITE
300
HERNDON, VIRGINIA 20171

CITIZENSHIP: DELAWARE

ENTITY: LIMITED LIABILITY COMPANY

APPLICATION NUMBER: 76445524

FILING DATE: 08/29/2002

REGISTRATION NUMBER: 2947268

ISSUE DATE: 05/10/2005

MARK: MONSTERCOMMERCE

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

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NO:HARA K. JACOBS COMPANY:BALLARD SPAHR ANDREWS & INGERSOLL, LLP

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ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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04/28/2008
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SUBMISSION TYPE:	NEW ASSIGNMENT												
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL												
CONVEYING PARTY DATA													
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PROPERTY NUMBERS Total: 1													
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Property Type	Number	Word Mark											
Registration Number:	2947268	MONSTERCOMMERCE											
CORRESPONDENCE DATA													
Fax Number: (215)864-9504 <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>													
Phone: 215.864.8209													
Email: jacobsh@ballardspahr.com													
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ATTORNEY DOCKET NUMBER:	077683												
NAME OF SUBMITTER:	Hara K. Jacobs												
Signature:	/Hara K. Jacobs/												

CH \$40.00 2947268

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TO:HARA K. JACOBS COMPANY:BALLARD SPAHR ANDREWS & INGERSOLL, LLP

Date:

04/28/2008

Total Attachments: 1

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